



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

USDC SDNY
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DEBRA MARCH
phone: (212) 356-2410
fax: (212) 356-3508
dmarch@law.nyc.gov

June 12, 2017

BY ECF and E-Mail

Honorable Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, New York 10007
Failla_NYSDChambers@nysd.uscourts.gov

MEMO ENDORSED

Re: Price v. City of New York, et al., 15-CV-5871 (KPF)

Your Honor:

I am an Assistant Corporation Counsel in the New York City Law Department and the attorney assigned to represent the City of New York, Inspector Obe, and Selvena Brooks in the above-captioned matter. I write to respond to the Valentin order issued on June 7, 2017 and to seek clarification on the current schedule.

By way of background, plaintiff alleges, *inter alia*, that on January 24, 2017 she was assaulted on a downtown 1 train and reported this to officers at the 34th Precinct and TB3. (See Civil Docket Entry No. 69). Plaintiff claims that Officer Emmet responded and that she followed up on this incident by speaking with Lt. DeJesus and Sgt. Shevitz. (*Id.*) On June 5, 2017 the Court entered an order stating that the non-MTA defendants' deadline to respond to plaintiff's Fourth Amended Complaint is on or before June 26, 2017. (*Id.* at 72). Two days later, on June 7, 2017, the Court issued a Valentin order instructing the City to provide the complete names of Lt. DeJesus, Officer Emmet, and Sgt. Shevitz, and their service addresses within 60 days of that order. (*Id.* at 73).

As an initial matter, in response to the Court's Valentin order, Sgt. Raymond DeJesus, Shield No. 2738 and Sgt. Brian Shevitz, Shield No. 5114 can be served at Transit District 3, the Subway Station at 145th Street and St. Nicholas Avenue, New York, N.Y. In addition, I was informed by NYPD that there is no officer with the last name "Emmet." By e-mail on June 6th and June 8th I asked plaintiff for a description of Officer Emmet in an effort to identify him. I have not yet received a response, but will continue to attempt to work with Ms. Price in an effort to identify this officer.

I am also seeking clarification on the current schedule. Your Honor has set June 26, 2017 as the deadline for non-MTA defendants to answer or move to dismiss. However, many of the

defendants that this Office will likely represent and respond on behalf of have not yet been served. It is unclear if they will be served by June 26, 2017, let alone request representation. In addition, this office needs to investigate these claims in order to meaningfully respond to the new claims and determine whether we are able to represent the additional defendants. In April 2017 this Office by e-mail requested that plaintiff provide releases pursuant to C.P.L. 160.50/55, in order to investigate the claims she sought to add. On April 21, 2017 the Court issued an order determining which additional claims plaintiff would be allowed to include, and set a deadline of June 26, 2017 for the City defendants to move or answer by. (*Id.* at Docket Entry No. 65). When plaintiff amended her complaint, this Office again requested that plaintiff provide these releases in order to investigate plaintiff's claims and try to identify Officer Emmet. Plaintiff has yet to provide these releases, limiting our investigation of these claims.

Given these facts, this Office respectfully requests that the Court clarify whether the current schedule is still in place. Given the current schedule, this Office is planning to move on behalf of the individuals it represents by June 26, 2017 and respond on behalf of the newly named individuals once they are properly served.¹ Alternatively, should the Court prefer that all defendants respond at once, defendants request that the court delay motion practice until all defendants this Office will represent have been served.

Thank you for your time and consideration herein.

Respectfully submitted,
/S
Debra March
Assistant Corporation Counsel

cc: **VIA FIRST CLASS MAIL**
Kelly Price
Plaintiff Pro Se
534 W. 187th Street
Apt. 7
New York, N.Y. 10033

¹ From an initial review of the Complaint, it appears that there will be a motion to dismiss on behalf of some of the newly-named defendants.

The Court is in receipt of this response to its *Valentin* Order. (Dkt. #74). By Order dated September 29, 2015, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*. To allow Plaintiff to effect service on Sgt. Raymond DeJesus, Shield No. 2738, and Sgt. Brian Shevitz, Shield No. 5114, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. Each can be served at the following address: Transit District 3, the Subway Station at 145th Street and St. Nicholas Avenue, New York, N.Y.

Because Defendants the City of New York, Inspector Obe, and Selvena Brooks contemplate that there may be a motion to dismiss on behalf of the newly named defendants, the current briefing schedule for these Defendants' contemplated motion to dismiss is adjourned *sine die*, to avoid duplicative motions practice. Once all of the newly named Defendants in this case have been served, the Court will set a new schedule for Defendants' motion.

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

Dated: June 12, 2017
New York, New York

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

A copy of this Order was mailed by Chambers to:

Kelly Price
534 W. 187th Street
Apt. # 7
New York, NY 10033